



Whatcom Conservation District

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August 20, 2004

VIA EMAIL & US MAIL

Andrew Kolosseus, Water Quality
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Comments to Draft General Permit.

Dear Mr. Kolosseus:

My Board of Supervisors met last week, received input from technical staff, and instructed me to communicate their considered opinion regarding the above referenced. They strongly urge the Department of Ecology to address by general permit only those elements essential to meet the expectations set forth in the US Environmental Protection Agency AFO/CAFO regulations. Although laudable in its effort to address state water quality laws, it is inapposite to include them there. Not only will that effort likely to be unsuccessful but it will have an unnecessary and deleterious impact to this State's livestock industries.

In considering the specific comments that follow, the Department of Ecology should be mindful of the accomplishments and expertise of this District. Whatcom County has 1/3 of the dairies in this State. There are over 63,000 milk cows plus replacements. Staff have either written or reviewed over 250 nutrient management plans since 1998. One Resource Specialist has been developing livestock nutrient management plans for over a dozen years. Another holds an engineering degree in biological systems engineering from WSU. He has been working for the past several years with Ag Canada in developing the NLOS nitrogen loss model. Both have collaborated with professors Robert Mitchell, PhD of WWU and Joe Harrison, PhD of WSU in their work with nitrogen in groundwater in Whatcom County. Staff has extensive experience with the NRCS 590 Specification having reviewed soil tests for 14,000 plus acres over the past several years.

In October of 2003, the Portage Shellfish beds were reopened. In June of this year the Drayton Harbor shellfish beds were conditionally opened to harvest. Fecal coliform bacterial pollution from livestock was a major contributor to the initial closures of these beds. More than 54, 000 acres in Whatcom County are under conservation plans and applying NRCS practices. It is one of the few areas in the nation where goals of a bacterial TMDL have been successfully achieved. Insofar as pollution to surface and groundwater from livestock operations, this District has an unparalleled understanding of the problems, their solutions and the limitations of available tools including soil sampling.

We would offer the following comments:

- The General Permit should defer to the National NRCS FOTG standards.
 - It is sufficient to state that “the nutrient management plan shall conform to the United States Department of Agriculture Natural Resources Conservation Service (NRCS). (S3.A.1.) The General Permit should not then proceed to spell out the specific elements of those plans. These should be incorporated by reference.
 - National standards are now set for livestock operations with the adoption of the AFO/CAFO regulations by USEPA. As livestock operations in other states are brought up to the level that dairy producers in this State now observe, an even playing field will be established. Current market conditions do not reward Washington producers for doing the “right thing”. If they are to survive, this State’s expectations must be on the order and timetable set by this national effort.
- The General Permit should not prescribe how soil monitoring is to be done nor should it attach regulatory significance to the results. (S4) Manure and soil tests are imprecise and subject to great variability due to a multitude of ever-varying environmental conditions. They are only suitable for use as a management tool to guide the producer. WSDOE should defer and honor the author of the 590 Spec in this regard.
 - On the farm-scale, monitoring should be limited to “implementation” i.e. whether the producer is applying the 590 specification. Technical assistance should be afforded producers in their interpretation.
 - Where reduced ground water quality due to excess nitrogen has been identified as a significant problem, direct action needs to be taken. Namely, groundwater management areas should be created under RCW 90.40.400 (f). That legislation was enacted for the purpose of identifying ground water management procedures that are consistent with both local needs and state water resource policies and management objectives; including the protection of water quality. The proposed protocol of ad hoc sampling of groundwater by those farms that do not achieve the prescribed soil testing analytical results will not clearly identify the sources or achieve the goal of coordinated, long-term ground water monitoring on a regional scale. Ground water monitoring should emulate the monitoring strategy of the Nooksack TMDL. The Nooksack TMDL data support long-term water quality trend analysis and pollution source identification. This type of ground water data will provide managers, regulators and producers with information needed to effectively direct resources and achieve water quality objectives. In addition, comprehensive solutions that look at all sources of nitrate (septic systems, application of commercial vs. organic fertilizers) are necessary. Funds would be better spent toward completing the necessary, scientific-based studies that would support quantification of the problem and identification of needed changes by the various contributors. So, if this is really a problem we should

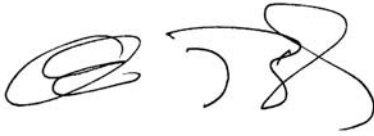
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adopt a program that will solve the problem and not dissipate resources in an ineffective response.

- The focus of the Department of Ecology in the general permit should be to identify and take action to rectify discharges to surface water.

Thank you for the opportunity to provide these comments. Do call me with questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. Boggs', with a stylized flourish at the end.

George J. Boggs
District Manager

CC: Nora Mena, Program Manager, WSDA
Frank Easter, NRCS Assistant State Conservationist
Professor Joe Harrison, PhD
Jay Gordon, Executive Director WSDF

Permit Number: _____

Coverage Date: _____

Issuance Date: _____

Effective Date: _____

Expiration Date: _____

**CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
AND STATE WASTE DISCHARGE GENERAL PERMIT**

Preliminary Draft -- July 12, 2004

State of Washington

Department of Ecology

Olympia, Washington 98504

In compliance with the provisions of

**Chapter 90.48 and 90.64 Revised Code of Washington as amended
and**

**The Federal Water Pollution Control Act as amended
(The Clean Water Act)**

Title 33 United States Code, Section 1251 et seq.

Until this permit expires, is modified or revoked, permittees that have properly obtained coverage by this permit are authorized to discharge to waters of the State in accordance with the special and general conditions which follow.

David C. Peeler, Manager
Water Quality Program
Department of Ecology

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SPECIAL CONDITIONS

S1. EFFLUENT LIMITATIONS

Beginning on the date of individual facility coverage of this permit, the permittee is authorized to discharge in accordance with the following conditions :

Comment – clean up drafting language.

A. Surface Water Effluent Limitations

1. *For all concentrated animal feeding operations (CAFOs), except new source swine, poultry, and veal Large CAFOs:*

Discharge of manure, litter, or process wastewater into waters of the state from the production area is prohibited, except when the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event and precipitation causes an overflow of manure, litter, or process wastewater.

2. *For new source swine, poultry, and veal Large CAFOs:*

Discharge of manure, litter, or process wastewater into waters of the state from the production area is prohibited, except when the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event and precipitation causes an overflow of manure, litter, or process wastewater.

3. Discharges to waters of the state which originate from a land area upon which manure, liter or process wastewater from a CAFO have been applied in accordance with a Nutrient Management Plan “NMP”.

Comment – This is consistent with the CWA and the implementation of Best Management Practices. This is also consistent with 40 CFR 122.

4. Discharges to waters of the state due to upset or bypass are only authorized in accordance with applicable requirements in 40 CFR 122.41.

Comment – clean up drafting language

5. Discharges to waters of the state shall not cause a violation of applicable State Water Quality Standards.

Comment – Placed this language in a separate paragraph. Consistent with proposed language.

6. CAFOs shall take immediate action to stop, contain, and clean up any unauthorized discharges and take all reasonable steps to minimize any adverse impacts to waters of the state and correct the cause of the problem.

Comment – moved language to this section.

B. Ground Water

Comment – cleaned up drafting language.

1. The permittee shall apply manure, litter or process wastewater to lands in accordance with a NMP.

Comment – cleaned up drafting language. Added language for consistency and added compliance with NMP.

2. Discharges to ground waters shall not cause a violation of applicable State Ground Water Quality Standards (Chapter 173-200 WAC). Contaminant concentrations found in saturated soils from the application of manure, litter or process wastewater in accordance with an NMP are exempt from the Chapter 173-200 WAC requirements.

Comment – cleaned up drafting language. Redrafted and added language that is consistent with State law and permit.

3. CAFOs shall take immediate action to stop, contain, and clean up any unauthorized discharges and take all reasonable steps to minimize any adverse impacts to waters of the state and correct the cause of the problem.

Comment – see above.

C. Transfer of Manure.

All CAFOs must comply with the following requirements relating to transfer of manure or process wastewater to other persons:

Prior to transferring manure, litter or process wastewater to other persons, all CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR Part 412. CAFOs must retain for five years the records of the date, recipient name and address, and approximate amount of manure, litter and process wastewater transferred to another person.

D. All CAFOs except horses, sheep, and duck operations must comply with the following requirements:

1. *Visual inspections.* There must be routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:
 - a. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;
 - b. Daily inspection of water lines, including drinking water or cooling water lines;
 - c. Weekly inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in S1.D2.

2. *Depth marker.* All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event, or, in the case of new sources subject to the requirements in S1.A2, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.
3. *Corrective actions.* Any deficiencies found as a result of these inspections must be corrected as soon as possible.
4. *Mortality handling.* Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to §412.31(a)(2) and approved by the Department of Agriculture are designed to handle mortalities.

S2. PERMIT COVERAGE

A. Permit Required

1. All concentrated animal feeding operations (CAFOs), as defined in S2.D, are required to obtain coverage under this general permit.

B. General Permit Coverage

1. All CAFOs shall submit a permit application form within 90 days of the effective date of this permit.
2. This general permit does not cover activities or discharges covered by an individual National Pollutant Discharge Elimination System (NPDES) or state waste discharge permit until the individual permit has expired or been canceled. Any person conducting an activity covered by an individual permit that may be covered by this general permit may request coverage under this general permit.
3. Any CAFO covered by this general permit must, at all times, comply with all conditions of this permit. The Department of Agriculture may issue a schedule of compliance with the general permit for operators that are not in compliance with any condition in this general permit.
4. This permit applies to the process wastewater collection, confinement, storage and handling areas of the permitted facility, including transfer facilities and land application activities under the control of the permittee.

C. Individual Permit Coverage

The Director may require any CAFO to apply for and obtain an individual permit. Coverage under this general permit will be terminated on the effective date of an individual permit. Until the individual permit is issued and effective, permit coverage will continue under the general permit.

Comment – cleaned up drafting language.

D. Definition of a “Concentrated animal feeding operation” (“CAFO”)

A CAFO is a lot or facility that is defined as a Large CAFO or Medium CAFO, or

that is designated as a CAFO.

(1) **Large CAFO.**

A lot or facility is defined as a Large CAFO if it meets all of the following three conditions:

- (a) It has animals (other than aquatic animals) that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period,
- (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where animals are confined, and
- (c) It stables or confines as many as or more than the numbers of animals specified in any of the following categories:
 - (i) 700 mature dairy cows, whether milked or dry;
 - (ii) 1,000 veal calves;
 - (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (iv) 2,500 swine each weighing 55 pounds or more;
 - (v) 10,000 swine each weighing less than 55 pounds;
 - (vi) 500 horses;
 - (vii) 10,000 sheep or lambs;
 - (viii) 55,000 turkeys;
 - (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 - (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
 - (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
 - (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

(2) **Medium CAFO.**

A lot or facility is defined as a Medium CAFO if it meets all of the following four conditions:

- (a) It has animals (other than aquatic animals) that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period,
- (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where animals are confined,
- (c) It stables or confines the number of animals that falls within any of the following ranges:
 - (i) 200 to 699 mature dairy cows, whether milked or dry;
 - (ii) 300 to 999 veal calves;
 - (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (iv) 750 to 2,499 swine each weighing 55 pounds or more;
 - (v) 3,000 to 9,999 swine each weighing less than 55 pounds;

- (vi) 150 to 499 horses;
- (vii) 3,000 to 9,999 sheep or lambs;
- (viii) 6,500 to 54,999 turkeys;
- (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- (d) Either one of the following conditions are met:
 - (i) Pollutants are discharged into waters of the state through a man-made ditch or other similar man-made device; or
 - (ii) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) **Designated CAFOs.**

A lot or facility may be designated as a CAFO by the Director if: **Comment – use Director to cover DOE or DOA.**

- (a) It has animals (other than aquatic animals) that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period;
- (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where animals are confined;
- (c) Either one of the following conditions are met:
 - (i) Pollutants are discharged into waters of the state through a man-made ditch or other similar man-made device or
 - (ii) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; and
- (d) It is determined to be a significant contributor of pollutants to waters of the state. A “Significant contributor of pollution” includes, but is not limited to, a facility directly discharging pollutants that causes or contributes to a violation of state Surface Water Quality Standards (Chapter 173-201A WAC), state Ground Water Quality Standards, (Chapter 173-200 WAC). **Comment – RCW 90.48 not applicable.**
- (e) In making this designation, the Director shall consider the following factors:
 - (i) The size of the AFO and the amount of wastes reaching waters of the state;
 - (ii) The location of the AFO relative to waters of the state;

- (iii) The means of conveyance of animal wastes and process waste waters into waters of the state;
 - (iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the state; and
 - (v) Other relevant factors.
- (f) No AFO shall be designated under this paragraph unless the Department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.
- (4) Note: Two or more operations under common ownership are considered to be a single operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

E. Other Definitions

1. "Bypass" means the intentional diversion of waste streams from any portion of the collection, storage, or treatment facility. The applicable requirements of 40 CFR 122.41 apply.
2. "Director" means the Director of the Department or his/her authorized representative.
3. "Department" means the Department of Ecology or the Department of Agricultural. **Comment – see above**
3. "Directly discharged" means a discharge of pollutants straight into waters of the state, or through a manmade ditch or similar manmade device into waters of the state.
4. "Ground water" and "Underground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.
5. "Land application area" means land under the control of an CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.
6. "Manure" is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
7. "Multi-year phosphorus application" means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.
8. "New Source" means a facility that began construction after April 14, 2003.

- 378 9. "NMP" means a written nutrient management plan containing the necessary
379 elements for nutrient management planning required under state law and
380 federal regulations (see S3 for details).

381 **Comment – cleaned up drafting language. Also deleted detail that was not**
382 **necessary , The NMP plan must be written consistent with the standards and applicable**
383 **state law. State law determines the approval and certification process. May include in**
384 **fact sheet, however, not proper for permit.**
385

- 386 10. "Process wastewater" means water directly or indirectly used in the operation
387 of the CAFO for any or all of the following: spillage or overflow from animal or
388 poultry watering systems; washing, cleaning, or flushing pens, barns, manure
389 pits, or other CAFO facilities; direct contact swimming, washing, or spray
390 cooling of animals; or dust control. Process wastewater also includes any water
391 which comes into contact with any raw materials, products, or byproducts
392 including manure, litter, feed, milk, egg or bedding.
393

- 394 11. "Production area" means that part of a CAFO that includes the animal
395 confinement area, the manure storage area, the raw materials storage area,
396 and the waste containment areas. The animal confinement area includes but is
397 not limited to open lots, housed lots, feedlots, confinement houses, stall barns,
398 free stall barns, milkrooms, milking centers, cowyards, barnyards, medication
399 pens, walkers, animal walkways, and stables. The manure storage area
400 includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles,
401 under house or pit storages, liquid impoundments, static piles, and composting
402 piles. The raw materials storage area includes but is not limited to feed silos,
403 silage bunkers, and bedding materials. The waste containment area includes
404 but is not limited to settling basins, and areas within berms and diversions
405 which separate uncontaminated storm water. Also included in the definition of
406 production area is any egg washing or egg processing facility, and any area
407 used in the storage, handling, treatment, or disposal of mortalities.
408

- 409 12. "Setback" means a specified distance from surface waters or potential
410 conduits to surface waters where manure, litter, and process wastewater may
411 not be land applied. Examples of conduits to surface waters include but are not
412 limited to: open tile line intake structures, sinkholes, and agricultural well
413 heads.
414

- 415 13. "Upset" means an exceptional incident in which there is an unintentional and
416 temporary noncompliance with technology based effluent limitations because of
417 factors beyond the reasonable control of the CAFO. An upset does not include
418 noncompliance to the extent caused by operational error, improperly designed
419 storage or treatment facilities, inadequate storage or treatment facilities, lack of
420 preventative maintenance, or careless or improper operation. The applicable
421 requirements of 40 CFR 122.41 apply.
422

- 423 14. "Vegetated buffer" means a narrow, permanent strip of dense perennial
424 vegetation established parallel to the contours of and perpendicular to the
425 dominant slope of the field for the purposes of slowing water runoff, enhancing
426 water infiltration, and minimizing the risk of any potential nutrients or pollutants
427 from leaving the field and reaching surface waters.

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15. "Waste storage facilities" means the physical system used for the isolation and retention of process wastewater at the operation until their ultimate utilization.
 16. "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, wetlands, and all other surface waters and water courses within the jurisdiction of the state of Washington.
 17. "25-year, 24-hour rainfall event" means a rainfall event with a probable recurrence interval of once in twenty-five years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.
 18. "100-year, 24-hour rainfall event" means a rainfall event with a probable recurrence interval of once in one-hundred years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

448 **S3. NUTRIENT MANAGEMENT PLANS**

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- A. *NMP Elements.* All operations covered under this permit shall have a NMP.
1. The NMP shall conform to the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), Code 590 dated April 1999, or equivalent best management practices. Equivalent best management practices may be used by the CAFO if:
 - a. they result in equal or better protection of surface and ground water quality and
 - b. they are approved by the Department.

"Equivalent best management practices" means operational, source control, treatment, or innovative practices which result in equal or better protection of surface water and ground water than the NRCS FOTG. When determining if a best management practice results in equal or better protection of water quality, all reasonable data on the practice should be considered.

Comment – cleaned up drafting language. Also, deleted detail that is contained in the above documents referred to in the NMP elements and should not be contained in the permit.
 2. *Requirements to develop and implement a NMP.* At a minimum, a NMP must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their NMPs developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 must have a NMP developed and implemented upon the date of permit coverage.

3. All CAFOs (except horses, sheep, and duck operations) that land apply manure, litter, or process wastewater, must do so in accordance with the following practices.
- a. The CAFO must develop and implement a nutrient management plan that incorporates the requirements of S3.A3 based on a field specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.
 - b. *Determination of application rates.* Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO must minimize phosphorus and nitrogen transport from the field to surface waters.
 - (i) The nutrient management plan shall include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.
 - (ii) A CAFO has the flexibility to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the best management practice of S3.A1.
 - c. *Manure and soil sampling.* Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of once every five years for phosphorus content. Large CAFOs see S4.C. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.
 - d. *Inspect land application equipment for leaks.* The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.
 - e. *Setback requirements.* Unless the CAFO exercises one of the compliance alternatives provided for in (e)(i) or (e)(ii) of this section, manure, litter, and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tileline intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.
 - (i) Vegetated buffer compliance alternative. As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer

where applications of manure, litter, or process wastewater are prohibited.

- (ii) Alternative practices compliance alternative. As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

- 4. Dairies that are CAFOs must also meet the minimum elements for nutrient management planning established by the Washington Conservation Commission under RCW 90.64.026(2).

B. *Nutrient Management Plan Compliance*

Upon approval and certification of implementation of a NMP, any operation covered by this general permit must comply with the terms and conditions of that NMP. **Comment – deleted language already covered in earlier sections.**

C. *Nutrient Management Plan Updates*

The CAFO shall develop and implement an updated nutrient management plan if:

- 1. facility expansions or modifications, production increases, or process modifications, pursuant to Condition S6 of this permit, will (1) result in new or increased generation of animal wastes beyond the scope of the current nutrient management plan, or (2) violate the terms and conditions of this permit;
- 2. the CAFO reduces or changes the field areas specified in the nutrient management plan used for land application; or
- 3. environmental monitoring shows that the quality of the ground water may be at risk (see S4.C). The updated nutrient management plan shall ensure that the requirements of S1.B are met.

S4. RECORD KEEPING, REPORTING, AND ENVIRONMENTAL MONITORING

A. Record Keeping.

All CAFOs must create, maintain for five years, and make available to the Department upon request, all records required by this permit.

- 1. For all CAFOs:
 - a. A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Department upon request
 - b. For any discharge, the following records are required;
 - (i) A description and cause of the discharge;
 - (ii) The period of discharge including exact dates, times and duration of discharge;
 - (iii) An estimate of discharge volume and quality of the water;
 - (iv) Name or location of receiving water; and
 - (v) Corrective steps taken if appropriate, to reduce, eliminate or prevent reoccurrence of the discharge.

2. The following records are required for all CAFOs except horses, sheep, and duck operations.
- a. Production Area:
- (i) Records documenting the inspections required under 1.D1 (medium CAFOs and designated CAFOs are exempt from this record keeping requirement);
 - (ii) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under S1.D2;
 - (iii) Records documenting any actions taken to correct deficiencies required under S1.D3. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate Correction;
 - (iv) Records of mortalities management and practices used by the CAFO to meet the requirements of S1.D4; and
 - (v) Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.
- b. Land Application Area:
- (i) Expected crop yields;
 - (ii) The date(s) manure, litter, or process waste water is applied to each field;
 - (iii) Weather conditions at time of application and for 24 hours prior to and following application;
 - (iv) Test methods used to sample and analyze manure, litter, process waste water, and soil;
 - (v) Results from manure, litter, process waste water, and soil sampling;
 - (vi) Explanation of the basis for determining manure application rates;
 - (vii) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;
 - (viii) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;
 - (ix) The method used to apply the manure, litter, or process wastewater
 - (x) Date(s) of manure application equipment inspection.

B. Reporting

1. *Discharges.* If any discharge to waters of the state occurs, or if a CAFO for any reason does not comply with any of the requirements of the permit, the CAFO shall notify the Department of Agriculture at (360) 902-1982 within 24 hours of the discharge.

The CAFO shall submit a written report within five (5) days to the Department of Agriculture. For discharges not allowed by the effluent limitation (S1.A or S1.B), the following information must be submitted:

- a. A description and cause of the discharge;
- b. The period of discharge including exact dates, times and duration of discharge;
- c. An estimate of discharge volume and quality of the water; d. Name or location of receiving water;
- e. Description of the impact of the discharge on the receiving water (if available); and
- f. Corrective steps taken if appropriate, to reduce, eliminate or prevent reoccurrence of the discharge.

2. CAFOs shall report to the Department of Agriculture within 24 hours of becoming aware of any significant physical failure at any time of a waste retention structure required under this permit.

3. *Annual Reporting.* CAFOs must submit an annual report to the Department of Agriculture. Annual reports are due on the anniversary date of the "effective date" of the permit. The annual report must include:

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to another person by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the nutrient management plan;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

~~Comment – deleted section h in relation to other changes made in the permit~~

C. Individual Permits:

1. CAFOs must use soil monitoring to demonstrate that a NMP is effectively treating nutrients in the soil to meet applicable ground water standards. If a CAFO cannot demonstrate that a NMP is effectively

treating nutrients in the soil to meet applicable ground water standards, the Director may require the CAFO to apply for and obtain an individual permit.

Comment – Deleted reference to size in this section. Size is only one variable that may or may not have any impact on the effectiveness of a NMP. The use of an individual permit is a reasonable approach to this issue. There terms and conditions of the individual permit will be determined by the Director and the permittee.

S5. WASTE STORAGE FACILITIES

All new or expanded waste storage facilities constructed after the issuance date of this permit shall be sited, designed and constructed consistent with NRCS conservation practice standard 313 titled “Waste Storage Facility.” New lagoon liners must also have “as-built” post construction documents signed and stamped by a licensed professional engineer, who made on-site construction inspections, verifying that liners were constructed as designed.

Comment – cleaned up drafting language.

All waste storage facilities shall be operated and maintained consistent with the nutrient management plan developed under S3 of this permit.

S6. PREVENTION OF SYSTEM OVERLOADING

The number of animals shall not exceed the capacity of the waste storage facilities for the operation. Prior to increasing the number of animals over the maximum number identified in the existing nutrient management plan, the permittee shall update its nutrient management plan consistent with S3 of this permit and update all system components identified as being in need of upgrading.

S7. TERMINATION OF COVERAGE

A Medium CAFO or Designated CAFO may request that coverage under this general permit be terminated if it no longer meets the definition of a CAFO. The request must be submitted to the Department of Ecology in writing and must be accompanied by the following:

- a. A copy of the current nutrient management plan; and
- b. A signed statement (see G18) that
 - (i) all facilities and best management practices have been installed and have been in operation for not less than 36 months, and
 - (ii) that there has not been a violation of permit condition S2 for the past 36 consecutive months.

The Department of Ecology will respond to the request for termination by reviewing the permit file and having a site inspection done.

GENERAL CONDITIONS

G1. Discharge Violations:

All discharges, applications, and activities authorized by this general permit shall be consistent with the terms and conditions of this permit. The application and/or discharge of any process wastewater more frequently than, or at a concentration in excess of that authorized by this general permit shall constitute a violation of the terms and conditions of this general permit.

G2. Proper Operation and Maintenance:

The Permittee shall at all times properly operate and maintain all facilities and systems used for process wastewater collection, storage and utilization (and related devices) which are installed or used by the Permittee for pollution control.

G3. Maintaining Compliance if System Fails:

The Permittee, in order to maintain compliance with its permit, shall control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities and equipment. This requirement also applies where the primary source of power is reduced, lost, or fails.

G4. Right of Entry:

The Permittee shall allow an authorized representative of the Department upon the presentation of credentials and such other documents as may be required by law:

- a. To enter upon the property where a potential or actual discharge is located or where any records are kept under the terms and conditions of this permit;
- b. To have access to and copy at reasonable times any records that must be kept under the terms of the permit;
- c. To inspect at reasonable times any monitoring equipment or method of monitoring required in the permit;
- d. To inspect at reasonable times any collection, treatment, pollution management, or application areas or facilities; and
- e. To sample any waters of the state, areas of potential discharge, or discharge of pollutants.

G5. Reporting a Cause for Modification:

A Permittee who knows or has reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation under Condition G11 or 40 CFR 122.62 shall report such plans, or such information, to Ecology so that a decision can be made on whether action to modify coverage or revoke coverage under this permit will be required. Ecology may then require submission of a new application for coverage under this, or another general permit, or an application for an individual permit. Submission of a new application does not relieve the Permittee of the duty to comply with all the terms and conditions of the existing permit until the new application for coverage has been approved and corresponding permit has been issued.

G6. Payment of Fees:

The Permittee shall submit payment of fees associated with this permit as assessed by Ecology. Ecology may revoke this permit or take enforcement, collection, or other actions, if the permit fees established under Chapter 173-224 WAC are not paid.

G7. Other Requirements of 40 CFR:

All other requirements of 40 CFR Sections 122.41 and 122.42 are incorporated in this permit by reference.

G8. Compliance with Other Laws and Statutes:

Nothing in the permit shall be construed as excusing the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G9. Additional Monitoring:

The Department may establish specific monitoring requirements in addition to those contained in this permit by administrative order¹ or permit modification to protect waters of the state.

G10. Duty to Reapply:

The permittee must reapply for permit renewal at least 180 days prior to the expiration date of this permit. An expired permit continues in force and effect until a new permit is issued or until Ecology cancels it, but only those operations which have reapplied for coverage under this permit will continue to have permit coverage.

G11. Permit Coverage Revoked:

Pursuant with Chapter 43.21B RCW and Chapter 173-226 WAC, the Director may require any discharger authorized by this permit to apply for and obtain coverage under an individual permit or another more specific and appropriate general permit. Cases where revocation of coverage under this permit may be required include, but are not limited to, the following:

- A. Violation of any term or condition of this permit;
- B. Obtaining coverage under this permit by misrepresentation or failure to disclose fully all relevant facts;
- C. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- D. Failure or refusal of the Permittee to allow entry as required in RCW 90.48.090;
- E. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations;
- F. Nonpayment of permit fees or penalties assessed pursuant to RCW 90.48.465 and Chapter 173-224 WAC; or
- G. Failure of the Permittee to satisfy the public notice requirements of WAC 173-226-130(5), when applicable.

Permittees who have their coverage revoked for cause according to WAC 173-226-240 may request temporary coverage under this permit during the time an individual permit is being developed, provided the request is made within ninety (90) days from

the time of revocation and is submitted along with a complete individual permit application form.

G12. General Permit Modification and Revocation

This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of Chapter 173-226 WAC. Grounds for modification or revocation and reissuance include, but are not limited to, the following:

- A. When a change which occurs in the technology or practices for control or abatement of pollutants applicable to CAFOs;
- B. When effluent limitation guidelines or standards are promulgated pursuant to the Clean Water Act or Chapter 90.48 RCW, for CAFOs.
- C. When a water quality management plan containing requirements applicable to CAFOs is approved; or
- D. When information is obtained which indicates that cumulative effects on the environment from CAFOs covered under this permit are causing unacceptable pollution.

G13. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

G14. Requests to be Excluded from Coverage Under a General Permit

Any discharger authorized by this permit may request to be excluded from coverage under the CAFO general permit by applying for an individual permit. The discharger shall submit to the Director an application as described in WAC 173-220-040 or WAC 173-216-070, whichever is applicable, with reasons supporting the request. These reasons must fully document how an individual permit will apply to the applicant in a way that the general permit cannot. The Department may make specific requests for information to support the request. The Director shall either issue an individual permit or deny the request with a statement explaining the reason for the denial. When an individual permit is issued to a discharger otherwise subject to the CAFO general permit, the applicability of the general permit to that Permittee is automatically terminated on the effective date of the individual permit.

G15. Change of Ownership or Control:

The permittee shall notify the Department of Ecology in writing at least 30 days prior to a change in facility ownership or a change in the lessee control (see condition G16).

G16. Permit Transfer

Coverage under this permit is automatically transferred to a new owner or operator if:

- A. The type of activities and practices are substantially unchanged.

- B. A written agreement between the old and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to Ecology;
- C. A copy of this permit is provided to the new owner or operator; and
- D. Ecology does not notify the Permittee of the need to submit a new application for coverage under the general permit or for an individual permit pursuant to Chapters 173-216, 173-220, and 173-226 WAC.

Unless this permit is automatically transferred according to section A. above, this permit may be transferred only if it is modified to identify the new Permittee and to incorporate such other requirements as determined necessary by Ecology.

G17. Penalties for Violating Permit Conditions

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the discretion of the court. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

G18. Signatory Requirements

All applications, reports, or information submitted to the Department shall be signed and certified.

- A. In the case of a corporation, partnership, or sole proprietorship, all permit applications shall be signed by either a principal executive officer of at least the level of vice president of a corporation, a general partner of a partnership, or the proprietor of a sole proprietorship.
- B. All reports required by this permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - 1. The authorization is made in writing by a person described above and submitted to the Department.
 - 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- C. Changes to authorization. If an authorization under paragraph B.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph B.2 above must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
- D. Certification. Any person signing a document under this section shall make the following certification:
 - I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system

designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

G19. Appeals

The terms and conditions of this general permit are subject to appeal. There are two different appeal categories.

- A. The permit terms and conditions as they apply to the appropriate class of dischargers are subject to appeal within thirty (30) days of issuance of this general permit in accordance with Chapter 43.21(B) RCW and Chapter 173-226 WAC; and
- B. The applicability of the permit terms and conditions to an individual discharger are subject to appeal in accordance with Chapter 43.21(B) RCW within thirty (30) days of the effective date of coverage of that discharger.

Consideration of an appeal of this general permit coverage of an individual discharger is limited to the applicability or non-applicability of this general permit to that same discharger. Appeal of this permit coverage of an individual discharger will not affect any other individual dischargers. If the terms and conditions of this general permit are found to be inapplicable to any discharger(s), the matter shall be remanded to Ecology for consideration of issuance of an individual permit or permits.

G20. Severability

The provisions of this permit are severable, and if any provision of this general permit or application of any provision of this general permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this general permit, shall not be affected thereby.

From: jon moose
To: Andrew K
Sent: Monday, August 09, 2004 6:39 PM
Subject: ecology permit

Please forgive this message being late. Summer time is a very demanding period as far as our schedules are concerned;

I wanted to take a moment to comment on OUR current draft of the ecology permit. As a member of the Doc I am concerned about the fact that this permit has strayed from the DOC's stipulation that we stick to the minimum federal requirements of the current Cafo regs.

Plane and simple, As the production Manager of an integrator that contracts with the poultry farmers of Washington State I am concerned that the current permit will cause an undo And unnecessary burden to our contract poultry farmers, they will be unable to produce poultry at a competitive price and we will be unable to provide chicken to the market. In addition we are discouraging the building of new and more state of the art poultry farms by making the building and permitting of these facilities uneconomical.

As the representative for the poultry(broiler industry) to the DOC. I have no choice but to with hold support for the current permit until a more equitable solution is found.

I